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2 settlement and no global settlement agreement  
3 would mean that the parties themselves, all the  
4 inter-creditor issues would come to the forth  
5 creditors would be suing each other, creditors  
6 would all be suing ResCap. This case would go  
7 on forever. Professional fees and the costs of  
8 administering this estate are enormous.

9 And it seems to me that that will be  
10 to the detriment of all competitors. And I  
11 think that's not helpful. I think in my  
12 business judgment this is a far better  
13 alternative.

14 Q. So in your view that you would  
15 consider what anybody asked you for a claim  
16 amount, if that --

17 A. That's why I asked him whether  
18 Ms. Lincoln was happy or -- I don't understand  
19 that. You can't ask me that question that way.

20 Q. Let me ask you the question.

21 Are you saying then that in order to  
22 allow that global settlement with all what you  
23 believed to be the important benefits of that  
24 global settlement to go forward, you'd give a  
25 claim to somebody if they wanted it in exchange

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2 for the support for that settlement?

3 MR. KERR: Objection.

4 A. Of course not.

5 Q. Okay.

6 So what are the criteria you apply to  
7 determine whether or not they should be getting  
8 a claim?

9 A. The same one --

10 MR. KERR: Objection. Asked and  
11 answered.

12 A. The same one I just gave before. In  
13 my judgment, the arguments as to whether or not  
14 the claims of FGIC or the trust should be  
15 equitably subordinated, could be subordinated  
16 under the Bankruptcy Code, whether alter ego  
17 arguments are possible, whether aiding and  
18 abetting arguments are possible, all of those I  
19 believe are the subject of litigation that  
20 would be time consuming, costly, destroy the  
21 global settlement agreement, and ultimately not  
22 be for the benefit of the creditors for this  
23 estate or for the estate of which I'm  
24 responsible.

25 So, in my mind, a global settlement

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2 agreement is a far better outcome.

3 Q. I got time consuming. We're all  
4 caught up in time consuming right now. I want  
5 to talk about the merits. The merits.

6 Does a \$331 million claim at ResCap,  
7 LLC reflect, in your view, the merits of  
8 litigating a \$596 million claim to conclusion?

9 MR. KERR: Objection.

10 MR. WYNNE: Objection. Asked and  
11 answered. Mischaracterizes his testimony.

12 A. I think I've answered that question.

13 Q. Answer it again, please.

14 MR. KERR: Objection. Asked and  
15 answered.

16 BY MR. SHORE:

17 Q. That's your objection.

18 You can answer it again.

19 A. In my mind, as I've had said before,

20 I think the \$337 million claim in the context  
21 of the global settlement agreement is an  
22 appropriate resolution as part of the mosaic of  
23 the global settlement agreement and is  
24 appropriate under the circumstances as  
25 reasonable and appropriate.



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2 Q. That wasn't my question. That's why  
3 I wanted you to answer my question.

4 Does \$337 million reflect your  
5 understanding of the likely result or within  
6 the range of results that would occur if  
7 independent of the global settlement FGIC  
8 pressed its \$596 million claim?

9 A. I don't know the answer to that  
10 question.

11 Q. Okay.

12 Let's focus on the disclosure  
13 statement. Did you play any role in the  
14 drafting of the disclosure statement sections  
15 that discuss substantive consolidation?

16 MR. KERR: Objection. Objection.

17 This is not the time to be talking about  
18 disclosure of planned confirmation issues.  
19 All right? And if you're not going to  
20 focus on the FGIC settlement, I will direct  
21 him not to answer and Judge Glenn, I think,  
22 will support me down the line on it.

23 BY MR. SHORE:

24 Q. Well, let me ask you this question.

25 Is there any basis for allowing FGIC

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2 Hypothetical creditor who asserts a  
3 claim at GMACM Mortgage and at ResCap, LLC, on  
4 alter ego theories, shouldn't they also be able  
5 to get a claim at G -- sorry -- at ResCap, LLC?

6 MR. KERR: Objection. I'll direct  
7 him not to answer that question.

8 MR. SHERWIN: On what basis?

9 MR. KERR: That's a hypothetical. It  
10 has to do with planned confirmation. It  
11 has nothing to do with the FGIC Settlement  
12 Agreement.

13 MR. SHORE: Let me take a quick  
14 break.

15 MR. KERR: Sure.

16 (Recess taken from 2:03 p.m. to  
17 2:09 p.m.)

18 BY MR. SHORE:

19 Q. All right.

20 If you could turn to the Iridian  
21 (phonetic) factors, which start on page 11.

22 We've gone through the -- with  
23 respect to A, right, the balance between the  
24 possibility of success, I take it that you're  
25 following your counsel's instruction that

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2 case; right, that proof of claim?

3 MR. KERR: Objection.

4 A. I don't know how much of that is  
5 spent in litigating that proof of claim, but it  
6 was part obviously of the global settlement  
7 agreement, and that's what motivated me in part  
8 to apply for a claim at the ResCap level. And  
9 the recognition that if there were to be  
10 litigation, there would obviously be no global  
11 settlement agreement, and the litigation would  
12 be both time consuming, costly and uncertain  
13 outcome.

14 Q. Okay.

15 Did you have any views, form any  
16 views of what it would take, how much it would  
17 cost to litigate the FGIC issues at the time  
18 you entered into the settlement agreement?

19 A. I was aware that there had been MBIA  
20 litigation against ResCap prior to the filing  
21 of the petition and had gone for three and a  
22 half years. So I assumed this was going to be  
23 a lengthy litigation, as well. I believe in  
24 the MBIA more than a million documents were  
25 produced. This looks to me like complex and



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2 long-term litigation.

3 Q. Okay.

4 Other than your knowledge that the  
5 MBIA litigation had gone on for three and a  
6 half years, did you have any other view, any  
7 other basis on which you formed your  
8 conclusions that it would be a complex and  
9 protracted litigation?

10 A. I had read, I think I referred to  
11 before, the Carpenter Lipps report, memorandum.  
12 That's what informed my view.

13 Q. Just so we are clear. I forgot to  
14 ask this question before.

15 The NewOak analysis, Dr. D'Vari, did  
16 you have that before you decided to enter into  
17 the settlement agreement?

18 A. No, I did not.

19 Q. Okay.

20 Had they performed any analysis for  
21 you prior to the entering into the settlement  
22 agreement?

23 A. Not for me, no, they did not.

24 Q. Okay.

25 So I take it that your decision to